

No. 14-0349 RS

On March 14, 2014, Plaza Mexico filed a complaint and motion for stay, requesting review of the Director of Revenue's final decision. On March 25, 2014, the Director filed an answer and motion for involuntary dismissal, accompanied by an affidavit and records of the Department of Revenue. We notified Plaza Mexico that it could respond to the motion on or before close of business on March 27, 2014, but Plaza Mexico filed no response. We held a conference call with the parties on March 28, 2014. Plaza Mexico did not dispute the proposed findings of fact contained in the Director's motion.

When a motion to dismiss relies on matters contained outside the pleadings, we may treat it as a motion for summary decision. 1 CSR 15-3.436(4)(A).¹ We may grant a motion for summary decision if a party establishes facts that entitle it to a favorable decision and no party genuinely disputes those facts. 1 CSR 15-3.446(6)(A). The following facts are undisputed.

Findings of Fact

1. On May 31, 2013, the Director issued a final decision assessing sales tax, additions to tax, statutory interest, lien filing fees, and bad check penalty in the total amount of \$236,929.69 to Plaza Mexico.

2. The Director mailed the May 31, 2013 final decision to Plaza Mexico by certified mail on May 31, 2013. Plaza Mexico received the final decision on June 3, 2013.

3. The Director's May 31, 2013 final decision also contained the following notification:

If you are adversely affected by this decision, you may appeal to the Administrative Hearing Commission. To appeal, you must file a petition with the Administrative Hearing Commission within sixty (60) days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed. If it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the commission as stated in Section 621.050.1, RSMo.

Appeals should be sent to the Administrative Hearing Commission, P.O. Box 1557, Jefferson City, Missouri 65102-1557.^[2]

4. On March 14, 2014, Plaza Mexico filed an appeal with this Commission.

Conclusions of Law

This Commission has jurisdiction over appeals from the Director's final decisions. Section 621.050.³ However, our jurisdiction comes from the statutes alone, and is bounded by

¹ All references to "CSR" are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

² Motion, Exhibit A, Document 1.

³ Statutory references are to RSMo 2000, unless otherwise noted.

those statutes. *State Bd. of Regis'n for the Healing Arts v. Masters*, 512 S.W.2d 150, 161 (Mo. App., K.C.D. 1974). Section 144.261, applicable here, provides that appeals from the Director's final decisions must be filed within sixty days after the mailing or delivery of the final decision.

In this case, the Director mailed his final decision to Plaza Mexico on May 31, 2013. Although notified of its appeal rights, Plaza Mexico filed its appeal on March 14, 2014 – considerably more than sixty days after May 31, 2013. Plaza Mexico's untimely filing deprives us of jurisdiction.

If we have no jurisdiction to hear the petition, we cannot reach the merits of the case and can only exercise our inherent power to dismiss. *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App., E.D. 2000). Accordingly, we grant the Director's motion.

Summary

We grant the Director's motion and dismiss Plaza Mexico's complaint.

SO ORDERED on April 1, 2014.

/s/ Karen A. Winn
KAREN A. WINN
Commissioner